

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TIME INC., HEARST CORPORATION, ADVANCE :  
MAGAZINE PUBLISHERS INC., AMERICAN :  
MEDIA, INC., HACHETTE FILIPACCHI MEDIA :  
U.S., INC., THE McGRAW-HILL COMPANIES, :  
INC., NEWSWEEK, INC., SOURCE INTERLINK :  
MAGAZINES, LLC, REED BUSINESS :  
INFORMATION, A DIVISION OF REED :  
ELSEVIER INC., VARIETY, INC., REED :  
ELSEVIER PROPERTIES INC., BONNIER :  
CORPORATION, ZIFF DAVIS PUBLISHING :  
HOLDINGS INC., FORBES LLC, REIMAN MEDIA :  
GROUP, INC., RD LARGE EDITION, INC., HOME :  
SERVICE PUBLICATIONS, INC. and READER'S :  
DIGEST LATINOAMERICA SA, :  
  
Plaintiffs, :  
  
- against - :  
  
DARREN ANDREW BUDD, SALVEO LIMITED, :  
CYBERNET COMMUNICATIONS, INC., :  
SWITCHWORKS TECHNOLOGIES, INC.; :  
HAMIDULLA GHUMAL ABBAS, YOAV :  
SCHWARTZ, RICK ROSS and JOHN DOES 1-20, :  
  
Defendants. :  
----- X

08 Civ. 7392 (WHP)  
ECF CASE

**DECLARATION OF RANDY L. SHAPIRO IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, RANDY L. SHAPIRO, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Deputy Chief Counsel of Newsweek, Inc. ("Newsweek"), one of the plaintiffs in the within infringement action. I am fully familiar with the facts stated herein. I submit this declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd

(“Budd”), Salveo Limited (“Salveo”), Cybernet Communications, Inc. (“Cybernet”), Switchworks Technologies, Inc. (“Switchworks”), Hamidulla Ghumal Abbas (“Abbas”), Yoav Schwartz (“Schwartz”), Rick Ross (“Ross”) and John Does 1-20 (collectively, “defendants”) from infringing plaintiffs’ copyrights, trademarks and trade dress from infringing plaintiffs’ copyrights, trademarks and trade dress.

2. Newsweek is a New York state corporation with its principal place of business at 251 West 57<sup>th</sup> Street, New York, NY 10019.

3. Newsweek owns and publishes NEWSWEEK magazine, the well-known newsweekly, which is celebrating its 75<sup>th</sup> anniversary this year. NEWSWEEK magazine is distributed throughout the United States (including in New York) and Canada, as well as throughout the world, with a circulation of over 3 million. Indeed, NEWSWEEK magazine today has the most extensive global audience of all newsweeklies, with a total of eleven editions in more than 190 countries, to a worldwide audience of over 20 million. NEWSWEEK’s online version, Newsweek.com, has an average monthly audience of more than 7 million unique users. Newsweek also owns Newsweek Budget Travel, Inc. (“NBT”), the publisher of ARTHUR FROMMER’S BUDGET TRAVEL magazine, a well-known travel magazine that is distributed throughout the United States and Canada ten (10) times a year. ARTHUR FROMMER’S BUDGET TRAVEL magazine, a ten-year-old publication, has an audience of over 2 million and a circulation of over 600,000. The magazine’s online version, BudgetTravel.com, reaches nearly 500,000 unique visitors each month. For purposes of this declaration, Newsweek and NBT shall together be referred to as “Newsweek”, and NEWSWEEK and ARTHUR FROMMER’S BUDGET TRAVEL magazines shall together be referred to as “the magazines”.

4. Newsweek's practice with regard to obtaining copyright on these magazines generally is to file, on a quarterly basis, group SE registration forms for the issues of both magazines published during the prior quarter. In addition, two (2) copies of each issue of both magazines are filed with the Copyright Office on a weekly (for NEWSWEEK) and monthly or bimonthly (for ARTHUR FROMMER'S BUDGET TRAVEL), as the case may be, depending on that magazine's publication schedule.

5. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

**Mygazines.com Is Infringing Newsweek's Copyrights and Trademarks**

6. I first became aware of the Mygazines.com website on or about July 23, 2008, at which time the website appeared to be fully populated with uniform, high-quality magazines. Without Newsweek's knowledge, consent or authorization, Mygazines.com was displaying full text reproductions of numerous magazines owned and published by Newsweek.

7. Specifically, the full text of the following magazines owned and published by Newsweek are being displayed by defendants on the Mygazines.com website without our consent:

(a) NEWSWEEK, issues dated May 5, 2008, May 12, 2008, June 16, 2008, June 23, 2008, June 30, 2008, July 7, 2008, July 21, 2008, July 28, 2008, August 4, 2008, and August 11, 2008. Newsweek obtained Copyright Registration No. TX 6-648-079 for the May 5, 2008, May 12, 2008, June 16, 2006, June 23, 2008, June 30 issues of NEWSWEEK on August 6, 2008, and Copyright Registration No. TX 6-648-078 for the July 7, 2008, July 21, 2008, July 28, 2008, August 4, 2008, and August 11, 2008 issues of

NEWSWEEK on August 6, 2008. Copies of the certificates of registration are annexed hereto as part of Exhibit A.

(b) ARTHUR FROMMER'S BUDGET TRAVEL, issue dated July/August 2008. Newsweek obtained Copyright Registration No. TX 6-856-660 of the issue referenced herein on August 6, 2008. A copy of the certificate of registration is annexed hereto as part of Exhibit A.

8. Newsweek also owns trademark rights in the titles of its magazines. Specifically, Newsweek holds, *inter alia*, the following trademark registrations for its magazines:

(a) NEWSWEEK is registration 1413355 in International Class 16 for a magazine of general news and features;

(b) NEWSWEEK is registration 2000346 in International Class 42 for on-line news services containing a computerized database featuring news stories and other news related material;

(c) BUDGETTRAVEL is registration 2890859 in International Class 16 for publications, namely a magazine featuring topics and information relating to travel;

(d) BUDGETTRAVELONLINE is registration 3152392 in International Class 41 for providing on-line magazines in the field of travel.

9. Newsweek is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Newsweek products.

10. In addition, Newsweek has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Mygazines.com displays the covers of NEWSWEEK and ARTHUR FROMMER'S BUDGET TRAVEL on the website, infringing Newsweek's trade dress in those covers.

11. Newsweek has not authorized or licensed defendants to post any content from its magazines on the Mygazines.com website.

12. Indeed, Newsweek operates a web site for each of its titles, and offers some of the content available in the print editions of its magazines through those sites. Newsweek earns revenue from its websites by, among other things, offering advertising space to advertisers in conjunction with Newsweek content. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with Newsweek's websites.

**Newsweek Gave Defendants Notice of Their Infringing Activity**

13. On August 1, 2008, on behalf of Newsweek, we wrote to defendant Salveo, the registered owner of Mygazines.com, at the address listed on its domain registration and its email address, demanding that it cease and desist from providing Newsweek's works to the public, in any form. Newsweek did not receive any response from Salveo.

14. On August 4, 2008, we wrote to defendant Switchworks at the address listed on its website, and to its email address, demanding that it immediately disable access to the Mygazines.com website or, at a minimum, block access specifically to the magazines published by Newsweek. Newsweek did not receive any response from Switchworks.

15. On August 6, 2008, our outside counsel wrote to defendant Cybernet, on our behalf, at the address listed on its website, and to its email address, demanding that it immediately disable access to the Mygazines.com website or, at a minimum, block access specifically to the magazines published by Newsweek. We did not receive a response.

**Defendants' Conduct is Causing Newsweek Irreparable Harm**

16. This application is brought on by way of Order To Show Cause because expedited relief is necessary due to the irreparable harm Newsweek is suffering and will suffer from defendants' continued infringement of Newsweek's copyrights, trademarks and trade dress.

17. Each day that defendants continue to display the content of entire issues of NEWSWEEK and ARTHUR FROMMER'S BUDGET TRAVEL prolongs the harm suffered by Newsweek. Both magazines are the product of the creative vision and hard work of hundreds of professionals, which defendants appropriate and distribute for their own end. Defendants' conduct undermines the entire industry and is nothing short of wholesale theft. It is particularly galling that defendants use the names and images of the magazines to advertise its website, and then offer our products online in a way that replicates the experience of reading our magazines. The harm to Newsweek is irreparable and should not be countenanced by this Court.

**WHEREFORE**, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of other plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying Newsweek's magazines, and from inducing and encouraging its users to upload our content.

Dated: August 19, 2008

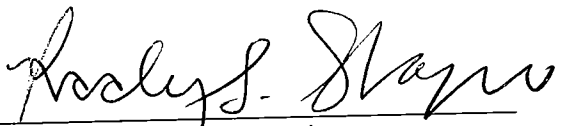
  
\_\_\_\_\_  
Randy L. Shapiro

Exhibit A  
To  
Declaration of Randy L. Shapiro



## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

**Form SE/Group**

**TX 6-648-079**



EFFECTIVE DATE OF REGISTRATION

**AUG 06 2008**

**AUG 06 2008**

ONE DEPOSIT RECEIVED

**AUG 06 2008**

EXAMINED BY

CORRESPONDENCE ☐

DO NOT WRITE ABOVE THIS LINE.

TITLE ▼

**1**

Newsweek (Domestic Edition)

0028-9604

List in order of publication

No previous registration under identical title

Volume▼	Number▼	Issue date on copies▼	Month, day, and year of publication ▼
1. CU	14	April 7, 2008	March 31, 2008
2. CU	15	April 14, 2008	April 7, 2008
3. CU	16	April 21, 2008	April 14, 2007
4. CU	17	April 28, 2008	April 21, 2008
5. CU	18	May 5, 2008	April 28, 2008
6. CU	19	May 12, 2008	May 5, 2008
7. CU	20	May 19, 2008	May 12, 2008
8. CU	21	May 26, 2008	May 19, 2008
9. CU	22	June 2, 2008	May 26, 2008
10. CU	23	June 9, 2008	June 2, 2008
11. CU	24	June 16, 2008	June 9, 2008
12. CU	25	June 23, 2008	June 16, 2008
13. CU	26	June 30, 2008	June 23, 2008
14.			

**2**

NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE COLLECTIVE WORKS MADE FOR HIRE ▼

Newsweek, Inc. 251 West 57th Street New York NY 10019

FOR NON-U.S. WORKS: Author's citizenship ▼

Domicile ▼

Nation of publication ▼

**CERTIFICATION:** I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, that I have deposited two complimentary subscription copies with the Library of Congress, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature (X)

*Paul S. Dworkis*

Typed or printed name

Paul S. Dworkis, Sr. VP/CFO

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Kathleen Iradi

Daytime telephone 212-445-4141

Address (if other than given below)

Fax 913-316-3333

Email kathleen.iradi@Newsweek.com

Certificate will be mailed in window envelope to this address:

Name▼

Newsweek, Inc. Attn: Kathleen Iradi

Number/Street Apt ▼

333 Route 46 West Suite 200

City/State/Zip▼

Mountain Lakes, NJ 07046

DEPOSIT ACCOUNT

Account number DAO 17760

Name of account Newsweek, Inc

MAIL TO  
Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20540-6000

\*17 USC §508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

## Certificate of Registration



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*Marybeth Peters*

Register of Copyrights, United States of America

**Form SE/Group**  
UNITED STATES COPYRIGHT OFFICE

TX 6-648-078



EFFECTIVE DATE OF REGISTRATION

AUG 06 2008

AUG 06 2008

ONE DEPOSIT RECEIVED

AUG 06 2008

EXAMINED BY

CORRESPONDENCE ☐

DO NOT WRITE ABOVE THIS LINE.

1

List  
in order of  
publication

No  
previous  
registration  
under  
identical  
title

☐

TITLE ▼

Newsweek (Domestic Edition)

ISSN ▼

0028-9604

	Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1.	CL I	1 and 2	July 7/July 14, 2008 (double issue)	June 30, 2008
2.	CL I	3	July 21, 2008	July 14, 2008
3.	CL I	4	July 28, 2008	July 21, 2008
4.	CL I	5	August 4, 2008	July 28, 2008
5.	CL I	6	August 11, 2008	August 4, 2008
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2

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Newsweek, Inc. 251 West 57th Street New York NY 10019

FOR NON-U.S. WORKS: Author's citizenship ▼

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Nation of publication ▼

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Handwritten  
signature (X)

*Paul S. Dworkis*

Typed or  
printed name

Paul S. Dworkis, Sr. VP/CFO

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Kathleen Iradi

Daytime telephone 212-445-4141

Address (if other than given below)

Fax 913-316-3555

Email

kathleen.iradi@Newsweek.com

Certificate  
will be  
mailed  
in window  
envelope  
to this  
address:

Name ▼

Newsweek, Inc. Attn: Kathleen Iradi

Number/Street/Apt ▼

333 Route 46 West Suite 200

City/State/Zip ▼

Mountain Lakes, NJ 07046

DEPOSIT ACCOUNT

Account number DAO 17760

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MAIL TO:

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101 Independence Avenue SE  
Washington, DC 20558-6000

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*Marybeth Peters*

Register of Copyrights, United States of America

\*\*\*  
\* \*

**Registration Number:**

**TX 6-856-660**

**Effective date of  
registration:**

**August 6, 2008**

### Title

**Title of Work:** Arthur Frommer's Budget Travel

**Volume** 11

**Number** 6

**Date on Copies** July/August 2008

### Completion/Publication

**Year of Completion:** 2008

**Date of 1st Publication:** May 30, 2008

**Nation of 1st Publication:** United States

**International Standard Number:** ISSN

1521-5210

### Author

■ **Author:** Newsweek Budget Travel, Inc.

**Author Created:** Collective Work

**Work made for hire:** Yes

### Copyright claimant

**Copyright Claimant:** Newsweek Budget Travel, Inc.

530 Seventh Avenue, New York, NY 10018

### Certification

**Name:** Paul S. Dworkis, Sr. VP/CFO